



IN THE CLAIMS

Please provisionally cancel claims 4-12, 14-16 and 18-48.

REMARKS

This amendment is responsive to the outstanding Office Action issued October 19, 2001. Claims 1-12, 14-16 and 18-48 were pending, claims 1-3 were allowed and claims 4-12, 14-16 and 18-48 were rejected. Applicant respectfully requests reconsideration and allowance of this application in light of the following amendments and remarks.

Applicant thanks the Examiner for the interview on March 7, 2001. With respect to the summary thereof, Applicant agrees the first paragraph to be a fair summary. With respect to the second paragraph, Mr. Friederichs stated that he would seek to file an amendment adding the limitations if the Examiner would carefully review the current rejection and see that it was the proper conclusion. No agreement was reached, during the telephone call. Mr. Friederichs has been instructed to bring the matter up on appeal.

Claims 4-12, 14-16 and 18-48 were rejected under 35 U.S.C. Section 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present application is based. Claims 4-12, 14-16 and 18-48 have been provisionally canceled with traverse.

The present request for a re-issue was filed based upon attorney error for not understanding the scope of the invention. The present rejection assumes the attorney did understand the scope of the invention, stating that the attorney should have commented regarding the Examiner's comments if the Examiner's comments were inaccurate. The assumption of full attorney understanding is incongruous with the record. For this reason the rejection should be withdrawn.

Second, Applicant has clearly distinguished the present case from all cited legal support and are to a degree supportive of Applicant's position. The Office Action has not asserted that the Applicant's interpretation of the law is inaccurate or improper. The only assertion offered is that Patent Office Policy is that silence equates with surrender. Other than Examiner statement as to policy, nothing has been cited or copies of the policy been provided as part of the Office Action. Moreover, no legal support has been cited providing that Patent Office Policy preempts patent law as set down by the Legislative and Judicial branches of government.

Third, the Office Action asserts that the silence of the Applicant is somehow an admission that the Applicant surrendered. Again, the record does not support such an assumption. The Examiner in the prior applicant stated that "no prior art of record, teaches or fairly suggest [sic] alone or in combination, a cover...[listing several limitations]..." Applicant does not disagree that such limitations makes a claim allowable. However, stating what is allowable is not synonymous with a statement that nothing else could be allowable. Several of the independent claims have limitations that the prior Examiner did not consider.

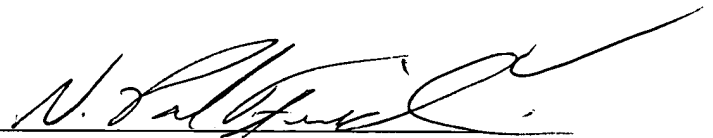
Fourth, there is no support in the record anywhere to support a statement that the prior Examiner was giving an advisory opinion as to the validity or invalidity of all other claims that could be written based upon the disclosure found in the application. Certainly, that Examiner would have at least wanted to know the wording of the claims prior to giving such an opinion. Several of the independent claims include limitations that the prior Examiner did not consider.

Fifth, the present Examiner asserts that silence is a surrender. Surrender to what becomes the relevant question. Surrender to the accuracy of the statements made (which are not presently being contested) or surrender to statements that nobody made (the prior Examiner did not state that any claims without the specified limitations would not be allowed). The present Examiner states that silence under Patent Office Policy is a surrender. However, silence met with silence is not an agreement with respect to Patent Office Policy. Silence rarely operates as a manner of making an agreement due to lack of clarity and understanding, regardless of whether one party claims it is their policy or not. Silence met with silence has, to the best of the present counsel's knowledge, never been recognized as an agreement and the present Office Action provides no legal support that it has found such law and that such law would apply to the present case.

The logic being presented in the Office Action is flawed. The flaws present the opportunity for numerous arguments, since the Office Action is neither supported by the law nor the facts.

Applicant submits that all objections and rejections have been overcome and should be withdrawn and that the patent sought to be re-issued is in a condition for allowance. Notice to that effect is respectfully requested. Any questions concerning this application may be directed to **N. Paul Friederichs at (612) 862-0517.**

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